UNITED STATES
v.
R. H. MacLAUGHLIN
CHRISTINE MacLAUGHLIN

IBLA 80-706 Decided September 30, 1980

Appeal from decision of Administrative Law Judge R. M. Steiner which declared the Hate to Leave It placer mining claim null and void. Contest CA 6122.

Affirmed.

1. Mining Claim: Discovery: Generally

Discovery of a valuable mineral deposit has been made where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine. Discovery of gold and other minerals sufficient to support a mining claim must be made on the claim itself, notwithstanding discovery of gold on nearby land which might persuade a reasonable prospector to continue his search for a valuable mineral deposit on the claim.

2. Contests and Protests: Generally--Mining Claims: Generally--Mining Claims: Contests--Mining Claims: Determination of Validity--Rules of Practice: Government Contests

The motivation of any Government agency in initiating a contest against mining claims is irrelevant. The fact that such contest challenges the validity of certain mining claims and not of others in the same general area does not constitute a denial of

due process. The Board of Land Appeals cannot abnegate its responsibility to determine the validity of mining claims when the issue is presented upon appeal, and where that issue is so presented, mining claims properly are declared null and void upon a showing of lack of discovery of a valuable mineral deposit upon the claims.

3. Administrative Procedure: Burden of Proof--Mining Claims: Contests--Mining Claims: Discovery: Generally

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to overcome that showing by a preponderance of the evidence.

4. Administrative Procedure: Burden of Proof--Mining Claims: Discovery: Generally

Where a Government mineral examiner testifies that he has examined a claim and found the mineral value insufficient to support a finding of discovery, a prima facie case of invalidity has been established.

5. Mining Claims: Contests

Government mineral examiners are not required to perform discovery work for claimants nor to explore beyond a claimant's workings. It is incumbent upon a mining claimant to keep his discovery points available for inspection by Government mineral examiners. Where he does not, he assumes the risk that the mineral examiner will not be able to verify the discovery of the alleged mineral deposit, and his unsupported argument that the samples taken by the examiner are not representative will be rejected.

APPEARANCES: R. H. MacLaughlin, pro se; Charles F. Lawrence, Esq., Office of the General Counsel, U.S. Department of Agriculture, San Francisco, California, for the Government.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

R. H. MacLaughlin and Christine MacLaughlin appeal from the May 20, 1980, decision of Administrative Law Judge R. M. Steiner which declared the Hate to Leave It placer mining claim null and void for lack of discovery of a valuable mineral deposit within the limits of the claim.

This proceeding, Contest CA 6122, arose when the California State Office, Bureau of Land Management (BLM), issued a contest complaint at the request of the Forest Service, U.S. Department of Agriculture, against the Hate to Leave It placer mining claim situated in the NE 1/4 sec. 32, T. 22 N., R. 10 E., Mount Diablo meridian, Sierra County, California, within the Plumas National Forest. The complaint charged: "1. Minerals have not been found within the limits of the claim in sufficient quantity, quality, and value to constitute a valid discovery; and 2. The land embraced within the claim is nonmineral in character." The contestees denied the allegations, and the matter came on for a hearing before Judge Steiner on November 8, 1979, in Sacramento, California. The Government was represented by Charles F. Lawrence, Esq., Office of the General Counsel, U.S. Department of Agriculture; the contestees appeared pro sese.

At the outset of the hearing, MacLaughlin contended the contest had been brought only because there was a structure on the claim. He declared the structure was not being used as a residential cabin, but rather as a storage building for the equipment used in this mining venture. Lawrence conceded that the contest would not have been brought if the building were removed, but stated that the principal issue to be resolved was the validity of the mining claim. Judge Steiner informed MacLaughlin that the Government may contest mining claims on public land at any time before a patent issues.

We have reviewed the record in this case and the arguments advanced by the parties. The Judge's decision sets out a summary of the testimony, the pertinent evidence, and the applicable law. We are in agreement with the Judge's findings and conclusions, and adopt his decision in its entirety as the decision of this Board. A copy of the Judge's decision is attached hereto as Appendix A.

Appellants confess that their ignorance of the Department's hearing procedures led to their failure to present more evidence as to their mining activity on the claim. However, they do not on appeal make any offer of proof which could justify a new hearing. They reiterate their earlier complaint that the contest was brought only to compel removal of the structures on the claim.

It is well established that the sine qua non for a valid mining claim located on public lands of the United States is the discovery of a valuable mineral deposit, as the mere location of a mining claim

conveys no rights to the claimant until there is shown a discovery of a valuable mineral deposit within the limits of the claim. 30 U.S.C. § 23 (1976).

[1] Under the so-called "prudent man test," discovery has been achieved when one finds a mineral deposit of such quantity and quality that a person of ordinary prudence would be justified in the further expenditure of labor and means with a reasonable prospect of success in developing a valuable mine. Castle v. Womble, 19 L.D. 455 (1894), approved by the Supreme Court in Chrisman v. Miller, 197 U.S. 313 (1905), and followed consistently thereafter. Accord, United States v. Coleman, 390 U.S. 599 (1968); Best v. Humboldt Placer Mining Co., 371 U.S. 334 (1963); Cameron v. United States, 252 U.S. 450 (1920); Cole v. Ralph, 252 U.S. 286 (1920); Adams v. United States, 318 F.2d 861 (9th Cir. 1963). The prudent man test has been complemented by the "marketability test" requiring a claimant to show that the mineral can be extracted, removed, and marketed at a profit. United States v. Coleman, supra; Converse v. Udall, 399 F.2d 616 (9th Cir. 1968), cert. denied, 393 U.S. 1025 (1969). Discovery of gold sufficient to validate a mining claim must be made on the claim itself, despite a gold discovery on land nearby which might induce a reasonable prospector to continue searching for a valuable mineral deposit on the claim. United States v. Rosenkranz, 46 IBLA 109 (1980).

Mineralization that only warrants further prospecting or exploration in an effort to ascertain whether sufficient mineralization might be found to justify mining or development does not constitute a valuable mineral deposit. A valuable mineral has not been found simply because the facts might warrant a search for such a deposit. Barton v. Morton, 498 F.2d 288 (9th Cir. 1974); United States v. Porter, 37 IBLA 313 (1978). In order to have a valid mining claim, valuable minerals must be exposed in sufficient quantities to justify development of the claim through actual mining operations. United States v. Marion, 37 IBLA 68 (1978).

[2] The motivation of any Government agency in initiating a contest against a mining claim is irrelevant. The fact that such contest challenges the validity of certain mining claims and not of others in the same general area does not constitute a denial of due process. The Board of Land Appeals cannot abnegate its responsibility to determine the validity of a mining claim when that issue is presented upon appeal, and where that issue is so presented, mining claims properly are declared null and void upon a showing of lack of discovery of a valuable mineral deposit upon the claim. United States v. Morton, 32 IBLA 263 (1977); United States v. Howard, 15 IBLA 139 (1974).

[3] When the United States contests a mining claim, it has assumed only the burden of going forward with sufficient evidence to establish a prima facie case of the charges in the contest complaint; the burden then shifts to the contestee to refute, by a preponderance

of the evidence, the Government's case. United States v. Hooker, 48 IBLA 22 (1980); Hallenbeck v. Kleppe, 590 F.2d 852 (10th Cir. 1979); United States v. Springer, 491 F.2d 239 (9th Cir. 1974), cert. denied, 419 U.S. 834 (1974); Foster v. Seaton, 271 F.2d 836 (D.C. Cir. 1959).

[4] The United States has established a prima facie case of the invalidity of a mining claim when a qualified Government mining engineer testifies that he has examined the claim and found the mineral values insufficient to support the discovery of a valuable mineral deposit. United States v. Taylor, 25 IBLA 21 (1976).

[5] It is the duty of the mining claimant whose claim is being contested to keep discovery points available for inspection by Government mineral examiners. Mineral examiners have no affirmative duty to search for indications of a discovery on a mining claim, nor do they have to go beyond examining the discovery points of the claimant. The function of the Government's mineral examiners is to examine the discovery points made available by the claimant and to verify, if possible, the claimed discovery. United States v. Bryce, 13 IBLA 340 (1973). Where a claimant fails to keep his discovery points open and safely available for sampling by the Government's examiner, or declines to accompany the examiner to the claim, he assumes the risk that the Government examiner will be unable to verify the alleged discovery of a valuable mineral deposit. United States v. Knecht, 39 IBLA 8 (1979); United States v. Bechthold, 25 IBLA 77 (1976).

The testimony given by the Government's expert witness established a prima facie case that there are no mineral deposits exposed on the Hate to Leave It placer mining claim which would justify a person of ordinary prudence in the further expenditure of labor and means with a reasonable prospect of success in developing a valuable mine. There was little evidence of active mining on the claim. The samples taken by the Government's witness produced negligible amounts of gold. After comparing the expense of a placer mining operation on the claim with the meager values of gold shown in the samples, the Government's witness reached a negative conclusion as to the existence of a discovery of a valuable mineral deposit on the claim.

MacLaughlin failed to introduce sufficient evidence to refute the Government's prima facie showing of invalidity. His vague testimony has little probative value and in fact supports the case made by the Government.

The Judge correctly concluded that there has been no discovery of a valuable mineral deposit within the limits of the contested claim.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

May 20, 1980

United States of America,	:	Contest No. CA-6122
	:	
Contestant	:	Involving the "HATE TO
	:	LEAVE IT" PLACER MINING
v.	:	CLAIM, Placer Mining
	:	Claim situated in a portion
R. H. MacLaughlin and	:	of NE-1/4 Sec. 32,
Christine MacLaughlin,	:	T. 22 N., R. 10 E.,
	:	M.D.M., Sierra County,
Contestees	:	California

DECISION

Appearances: Charles F. Lawrence
Office of the General Counsel
United States Department
of Agriculture
For the Contestant

R. H. MacLaughlin,
Christine MacLaughlin,
pro sese.

Before: Administrative Law Judge Steiner

This is an action brought by the Bureau of Land Management on behalf of the United States Forest Service (USFS), pursuant to the Hearings and Appeals Procedures of the Department of the Interior, 43 CFR, Part 4, to determine the validity of the above-named placer mining claim.

The Contestant filed a Complaint herein on July 13, 1979 alleging, inter alia:

> A. Minerals have not been found within the limits of the claim in sufficient quantity, quality, and value to constitute a valid discovery.

B. The land embraced within the claim is nonmineral in character.

The Contestee filed an Answer denying the foregoing allegations of the Complaint on August 13, 1979. A hearing was held in Sacramento, California.

Mr. Henry W. Jones, after having been duly qualified as a mining engineer, testified that he examined the "Hate to Leave It" placer claim on June 9, 1977, July 7, 1978 and November 7, 1979. (Tr. 16). After repeated attempts to reach the MacLaughlins failed, Mr. Jones examined the claim which is located one mile due north of Howland Flat, an old famous mining camp. A stream cuts through the claim which is heavily timbered, but accessible by road. The area is of a recent volcanic origin. A ravine running through the claim contains very little gravel. (Tr. 20). He found evidence of sniping along the ravine. No other workings were found and very little mineralization was detected.

Sample No. 1 was taken from a small two foot by two foot cut along a bank which revealed some signs of dredging. At sample point No. 2, there were indications that material from the side of the bank had been excavated. These sites were the only places which contained significant amounts of gravel. (Tr. 21). He examined the entire claim but found no mineralization. It was his opinion that a prudent man would not be justified in developing the "Hate to Leave It" placer claim. There are no placer gravels on the claim. Mr. Jones admitted he did not sample the bedrock. (Tr. 28). Five pans of mineral were taken from sample point No. 1 and four pans from sample point No. 2. (Tr. 30). He found a dredge in a cabin on the claim. The alluvial material near the sampled areas disclosed no evidence of gold. (Tr. 61). There were large boulders in that area and in the stream. (Tr. 42).

Robert. H. MacLaughlin, the mining claimant, stated that the Government samples were inadequate to determine the value of the claim. He had worked the claim for almost six years and recovered more than enough gold to pay for his way up there. He had put some gold away. He had invested in two dredges and a truck. He has dredged the claim in the stream. (Tr. 44). He breaks apart the bedrock and removes the gold with a dredge. He also has panned for gold. (Tr. 45). He has recovered a few ounces of gold each year that he mined the claim. He mines gold for 25 days during the summer. (Tr. 48). There is a 1000 yard gravel deposit in the middle of the ravine on the claim. (Tr. 55). He had saved fifteen or twenty nuggets. He had never identified any mineral deposits for Government mineral examiners. (Tr. 56). He identified ten nuggets weighing about 3/4 of one ounce which were recovered by dredge from one hole.

Under the mining laws of the United States [30 U.S.C. section 22 et seq. (1976)], a valid location of a placer mining claim requires discovery of a valuable mineral deposit within the limits of the claim. The rule as to what constitutes a valid discovery has been stated as follows:

> * * * Where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine, the requirements of the statute have been met. * * * Castle v. Womble, 19 L.D. 455, 457 (1894); Chrisman v. Miller, 197 U.S. 313 (1905); Best v. Humboldt Placer Mining Co., 371 U.S. 334 (1963).

When the Government contests a mining claim it has assumed the burden of presenting a prima facie case that the claim is invalid. When it has done so, the burden then devolves on the mining claimant to prove by a preponderance of the evidence that the claim is valid. United States v. Zweifel, 508 F.2d 1150, 1157 (10th Cir. 1975), United States v. Springer, 491 F.2d, 239, 242 (9th Cir.), cert. denied, 419 U.S. 234 (1974); Foster v. Seaton, 271 F.2d 836, 838 (D.C. Cir. 1959).

Where a Government mineral examiner testifies that he has examined a claim and found the mineral values insufficient to support a finding of discovery, a prima facie case of invalidity has been established. Government mineral examiners are not required to perform discovery work for a claimant or to explore beyond a claimant's workings. United States v. Ruth Arcand, 23 IBLA 226 (1976); United States v. Becker, 33 IBLA 301 (1978).

In a mining claim contest, no weight will be given to a claimant's allegation that the Government's mineral examiner failed to sample the discovery point or the best mineral showings, where the claimant was invited to indicate his discovery to the examiner and failed to do so, and where he also failed to introduce convincing evidence of his own that a discovery has been made. United States v. Timm, 36 IBLA 316 (1978). Mineral values on a claim may properly be tested by taking dry samples and washing them down to concentrate. Government mineral examiners are not required to duplicate the mining claimant's proposed extraction operation in order to show that it would not be productive. It is not necessary to set up a dredge in order to sample the mineral values there. See United States v. Russ Knecht, 39 IBLA 8, 11 (1979).

The government has established, prima facie, by the testimony of its expert witness, that there are no valuable mineral deposits exposed within the limits of the "Hate to Leave It" placer claim to qualify as a discovery. Mr. Jones' examination and sampling revealed no mineralization worthy of development. No valuable placer materials were found on the claim.

The mining claimants have failed to introduce preponderating evidence to refute the Government's prima facie case. No probative evidence has been submitted to verify any of the claimants' contentions. While there may have been dredging along the stream on the claim, the Contestees have failed to prove that gold can be recovered at a profit. Mr. MacLaughlin was reluctant to reveal the location of any valuable mineral deposits. No value may be accorded deposits which are not identified and exposed.

It is concluded that there has been no discovery of a valuable deposit within the limits of the claim.

Accordingly, the "Hate to Leave It" placer mining claim is hereby declared null and void.

R. M. Steiner
Administrative Law Judge

Enclosures:
1. Information pertaining to Appeals Procedures.
2. Copy of 43 CFR section 4.413 dated January 16, 1980.

Distribution:
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